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2012 IL App (3d) 110652-U

Order filed May 21, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

DEUTSCHE BANK,) Appeal from the Circuit Court
) of the 12 th Judicial Circuit,
) Will County, Illinois,
Plaintiff-Appellee,)
) Appeal No. 3-11-0652
v.) Circuit No. 10-LM-1299
)
LYNN PIRKLE,) Honorable
) Mark Thomas Carney and
) Roger Rickmon,
Defendant-Appellant.) Judges, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant did not establish that the plaintiff did not properly serve her with the relevant documents in the forcible entry and detainer action.

¶ 2 The trial court entered an order granting Deutsche Bank, the plaintiff, possession of real estate located at 8844 Port Washington Drive in Frankfort, Illinois (the subject property). Lynn Pirkle, the defendant and a tenant residing at the subject property, appeals, contending that the plaintiff did not properly serve her with notice of its intent to file a forcible entry and detainer

action, the summons and complaint, or a motion to compel the production of her lease and proof of rental payments. We affirm.

¶ 3

FACTS

¶ 4 The record indicates that on November 4, 2009, in case No. 08-CH-1518, a Will County trial court entered an order approving the foreclosure sale of the subject property and distribution of the sale proceeds. This order indicates that the court found that "all notices required by 735 ILCS 15-1507© were given" and that the sheriff was to evict Doris Carlin from the premises. This order does not name the defendant as a party to the foreclosure case, and the record indicates that the defendant did not own the subject property, but leased it.

¶ 5 On May 19, 2010, the plaintiff filed a "notice of intent to file forcible entry and detainer action and demand for possession[,]" which bore a date of January 19, 2010. The plaintiff also filed an affidavit from a licensed process server, who averred that she served the plaintiff's demand for possession on the defendant by leaving it on the door of the subject property. The process server's affidavit of service reveals that she attempted to serve the defendant and unknown occupants at the subject property on four occasions between January 26-29, 2010. On one occasion, a female answered the door, stated she was not the defendant and refused to accept any documents. On the other occasions, the process server noted that no one answered the door, but she observed that the utilities were on; a car or tire tracks were in the driveway; and the same female was inside.

¶ 6 On May 19, 2010, the plaintiff also filed a complaint and summons. The complaint indicated that the plaintiff was the owner of the property pursuant to a foreclosure sale, and that the defendant was unlawfully withholding possession of the subject property from it. The

corresponding summons notified the defendant to file her appearance and indicated that a hearing would occur on June 16, 2010. Thereafter, on May 25, 2010, the plaintiff served the summons and complaint on the defendant via substitute service by leaving a copy of these documents at the subject property with a person 13 years of age or older, informing the person of the contents, and then mailing copies to the defendant at the subject property.

¶ 7 Neither party appeared for the June 16, 2010, hearing, so the court dismissed the cause for want of prosecution. The plaintiff filed a motion to vacate the dismissal. The plaintiff sent notice of this motion to the defendant by regular mail, which indicated that the court would conduct a July 29, 2010, hearing on it. The plaintiff appeared at this hearing, but the defendant did not. The trial court vacated the dismissal order and granted the plaintiff immediate possession of the subject property. In her appellate brief, the defendant contends that a notice of this decision is the only notice she ever received in the instant case, and that she found this notice on the front door of the subject property.

¶ 8 The defendant subsequently filed a motion to vacate the order granting the plaintiff immediate possession, alleging that she was a tenant with a lease and that she was not notified of the July 29, 2010, court hearing. The court conducted a hearing on the defendant's motion, during which the defendant contended that she had prepaid all of her rent through December 2010. The court granted the defendant's motion to vacate, and the corresponding written order indicates that the cause was continued to allow the defendant to retain counsel, and for a status update and trial setting.

¶ 9 The plaintiff subsequently filed a "Rule 214 Request for Production of Documents," requesting that the defendant turn over any documents pertaining to her alleged lease on the

subject property and proof of any rental payments made. The record indicates that the plaintiff served its Rule 214 request to produce on the defendant by regular mail, and the face of the notice swears to such service. The plaintiff also sent a subpoena to Carlin requesting the same documents. However, after one month the plaintiff did not receive a response from either the defendant or Carlin, so the plaintiff sent letters to both and again requested the lease and proof of any rental payments. It did not receive a response or the requested documents.

¶ 10 On January 28, 2011, the plaintiff filed a motion to compel the defendant and Carlin to produce the defendant's lease on the subject property and proof of any rental payments. The plaintiff filed a notice of this motion, in which it swore that it served the defendant with the notice and motion by regular mail at the subject property. At the subsequent February 10, 2011, hearing, the plaintiff appeared but the defendant did not. The court thus entered an order barring the defendant from later producing the documents requested in the plaintiff's motion to compel.

¶ 11 The court conducted a hearing on July 18, 2011, on the plaintiff's underlying motion for forcible entry and detainer and demand for possession. The defendant commenced the hearing by requesting a continuance, which the trial court denied. The defendant then contended that she never received the plaintiff's request to produce the documents pertaining to any lease or rental payments. She explained that she did not have a mailbox at the subject property and thus, anything sent to her there would be returned to the sender as undeliverable. The plaintiff asserted that it purchased the subject property in 2008, and since then, the defendant has claimed that she had a lease on the property, but has never produced any supporting documents.

¶ 12 The court ultimately decided to continue the hearing, but before doing so, it noted that the parties were "beyond" whether the defendant had been served with the summons and complaint,

and that it was evident that the defendant had been served as she had appeared in court. Before the conclusion of the hearing, the court also ordered the plaintiff to serve the defendant with the request to produce in open court. The plaintiff complied, and in the court's written order, it indicated such service.

¶ 13 The hearing on the plaintiff's motion for possession reconvened on August 12, 2011. On that day, however, the defendant filed a motion to dismiss the cause for lack of standing, contending that someone else had purchased the property. The court denied this motion, and then denied her motion for a continuance.

¶ 14 The defendant did not produce her lease on the subject property or proof of any rental payments at this hearing. The defendant continued to maintain that she had not received notice of the request to produce because she did not have a mail box, and that she had not yet produced any documents because she was not notified of any such request. However, the defendant acknowledged the July 18, 2011, court order indicating that the plaintiff served her with its request to produce in open court. The court ultimately granted the plaintiff's motion for possession, but stayed possession for 30 days to permit the defendant to relocate.

¶ 15 The defendant filed a notice of appeal, and a motion to stay enforcement of the order for possession pending appeal. The court granted the latter motion.

¶ 16 ANALYSIS

¶ 17 On appeal, the defendant raises the issue that she was "denied her right to a defense by not being properly served." In the argument portion of her brief, the defendant specifically asserts that the plaintiff did not properly serve her with the notice of intent to file a forcible entry and detainer action. The defendant cites only section 15-1508.5 of the Illinois Mortgage

Foreclosure Law (the Foreclosure Act) (735 ILCS 5/15-1508.5 (West 2008)) in support of this proposition.

¶ 18 Section 15-1508.5 of the Foreclosure Act governs notice given by a foreclosure purchaser to an occupant of the purchased real estate. Its purpose is to notify the occupant of the sale, and to, among other things, inform the occupant that the purchaser is not requesting that the occupant vacate the premises at that time. 735 ILCS 5/15-1508.5(a)(1)(iv) (West 2008)). The Forcible Entry and Detainer Act also has a provision governing notice, and it applies in instances where the purchaser is seeking immediate possession of the premises. 735 ILCS 5/9-104 (West 2010)).

¶ 19 In this case, the defendant's reliance on the Foreclosure Act to support her assertion that the plaintiff did not properly serve the notice of intent to file a forcible entry and detainer is misplaced. As indicated by the title of this motion, this case pertains to the plaintiff's request for forcible entry and detainer. It is not a foreclosure action, and the defendant has not advanced an argument as to why the plaintiff must comply with the notice provisions of the Foreclosure Act in a case that does not concern a foreclosure. We further note that the record indicates that as part of the foreclosure sale, the court found that all of the notices required under the Foreclosure Act were given.

¶ 20 Furthermore, on appeal, the defendant has not asserted that the plaintiff failed to comply with the notice provision of the Forcible Entry and Detainer Act (735 ILCS 5/9-104) (West 2010)). Since this case originated with the plaintiff's filing of a motion for forcible entry and detainer and immediate possession, this provision would appear to apply to the case at bar. Nonetheless, in the absence of proper argument, we may not consider this claim. See *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991) ("[a] reviewing court is entitled to have the issues clearly

defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research"); see also *Gandy v. Kimbrough*, 406 Ill. App. 3d 867 (2010).

¶ 21 The defendant next contends that she was never served with the sheriff's service order of May 25, 2011, which "state[d] substitute service by mailing a copy of the writ, which would have been returned as undeliverable." She also argues that she was "never served" with the motion to compel, contending that anything mailed to her would have been returned as undeliverable. The only legal authority the defendant offers in support of these contentions is section 2-203(a) of the Civil Practice Act (735 ILCS 5/2-203(a) (West 2010))

¶ 22 In this case, the defendant has not established that the plaintiff did not serve her with the May 25, 2011, summons and complaint. Pursuant to section 2-203(a) of the Civil Practice Act (735 ILCS 5/2-203(a) (West 2010)), a plaintiff may effectuate service of a summons upon a defendant by, among other things, leaving a copy at the defendant's usual place of abode with a person 13 years of age or older and informing the person of the contents thereof, and then mailing a copy of the summons to the defendant at her usual place of abode. Here, the record indicates that the plaintiff served the summons and complaint in this manner, and thus, the defendant's contention that she was not served is without merit.

¶ 23 We also conclude that the defendant has also not shown that the plaintiff did not serve her with the motion to compel. Illinois Supreme Court Rule 11 (eff. Dec. 29, 2009) articulates the proper manner of service for documents other than a summons or complaint. Pursuant to Rule 11(b)(3), a plaintiff may effectuate proper service by mailing the document to the defendant or the defendant's attorney. Supreme Court Rule 12(b)(3) (eff. Dec. 29, 2009) provides that service

by mail is sufficiently proved if an attorney certifies, or another person avers, that he or she made such service. Here, the record shows that the plaintiff served the defendant with this motion by placing it in the mail, and the plaintiff swore under oath to such service. Merely because the defendant contends she did not receive this motion does not invalidate otherwise proper service. *Esmail v. Dept. of Rev.*, 371 Ill. App. 3d 778 (2007). Thus, her contention that she was not served with the motion to compel is also without merit.

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 26 Affirmed.